In Supreme Court of the Hawaiian Islands. In Banco. In Equity. January Term 1890.

MAROE AND C. B. KANAKANUI, HER HUSBAND, VS. ANAKALEA KAURI, K. AND KEARI, K.

PUDD, C.2., M'CULLY, BICKERTON AND DOLE, J.3. Ominion of the Court by Bickerton, J.

This matter comes here on appeal from the decision of Mr. Justice Preston, which is as follows:

DECISION APPEALED FROM.

"This is a suit for a declaration that a purchase of land made by decree affirmed. the defendant Kauhi in his own name, was made by him as the agent, and for the use of the plaintiff Mahoe and the defendant Ke-

The defendant Kanhi denied the agency, and averred that if there had been an agency it had been determined.

The defendant Keahi at the hearing disclaimed any interest in the purchase.

After a careful consideration of the testimony, I have arrived at the conclusion that the defendant Kauhi was employed by Mr. Wundenberg who Kauhi knew was acting for the plaintiffs, to purchase the land in question; that he did purchase the land before such agency terminated and took a conveyance thereof to himself contrary to his duty.

The defendant Keahi having disclaimed any interest in the property, I am of opinion that the plaintiffs are entitled to have the land conveyed to them or either of them as they may elect.

A decree must be made declaring that at the time of the purchase of the land in the bill referred to, the defendant Kauhi was the attorney and agent of the plaintiffs, and improperly took the conveyance thereof in his own name; that upon payment by the plaintiffs to the said defendant within ten days from the signing of the decree, of the sum of two hundred and twenty (\$220) dollars, the said defendant is declared to be a trustee of the said land for the plaintiffs, and that he thereupon execute and deliver to the plaintiffs or to either of them as they shall elect, a good and sufficient conveyance of the said land. And that the defendant Kauhi pay to the plaintiffs the costs of this suit.

The bill will be dismissed as against the defendant Keshi, but as I am not satisfied that he has been straightforward in this transaction, I am not inclined to award him costs, and he must therefore pay his own."

BY THE COURT. This is a question of fact, and depends entirely on the weight of evidence and the credibility of the witnesses.

It is contended by defendant's counsel that the evidence of Wundenberg stands alone as to the fact that Kauhi was employed by him to purchase the land in question for the plaintiffs; and claims that Mr. Wundenberg only employed him to negotiate for the purchase of the land and did not mention that it was for the plaintiffs; that offers were made and that the negotiations failed and that he ceased to act as agent for Wundenberg as Wundenberg would not offer more and consequently he was free to purchase the land for himself.

On a careful examination of the evidence, this contention does not seem to be correct, on the contrary, the evidence fully sustains the finding of fact appealed from. Kanakanui testifies that after they had brought suit against Kekaina (Kauhi's grantor) which they had to discontinue in consequence of the death of Mr. A. C. Smith their attorney, they authorized Mr. Wundenberg to go and buy the land for them; that he, Wundenberg, employed Kauhi; that Kauhi told him that he was so employed, witness's wife and another being present at the time. Witness also says: "Afterward he came to me and said he had offered the man sixty dollars and he would not take it, and I reported it to Mr. Wundenberg and found out that he had not been limited to money, but not to act like a crazy man in making the purchase." There is also the evidence of several witnesses that Kauhi went to plaintiff's house with Kekaina and talked with Mahoe about the purchase of this land, this was before he, Kauhi, purchased it in his own name.

The defendant Kauhi testifies that Kanakanui told him the deed to Keksina was fraudulent, this was at the time Mahoe and Kekaina had the conversation about purchase of land, and some months after his conversation with Wundeaberg; also, that, Mr. Wundenberg told him the deed to Keksina was a fraud; also, that Kanakanui had taken steps towards opposing

that deed. Mahoe (w) one of the plaintiffs testifies, that she knew Wundenberg had employed Kauhi, for Kauhi told her so. She says: "Kauhi told my husband and myself and also Keahi, that Wundenberg the right to make such rules with had employed him to buy the land regard to the cleanliness of scholars for us; that is, for my brother and as they may deem necessary, and myself, but he did not say that that such rule was made in this Wundenberg had limited him to case, and that the rule and its

evidence does not stand alone, it is ant's brief. well supported by evidence of the other witnesses. There is no doubt in our minds that Kauhi knew that Mr. Wundenberg was acting for the plaintiffs to purchase the land left to his judgment and that he was not limited; that at the time his agency had not teminated, and that his taking the conveyance to himself was contrary to his duty as agent and attorney.

The appeal is dismissed, and the W. A. Kinney, for plaintiff; W.

C. Achi, for defendant. Honolulu, Feb. 10th, A.D. 1890.

In the Supreme Court of the Hawaiian Islands. January Term, 1890.

KAHULA VS. H. Z. AUSTIN.

Appeal on Exceptions from the Second Judicial Circuit Court.

JUDD, C.J., M'CULLY, BICKERTON AND DOLE, J.J. In an action of tort, the defendant, a school teacher, having cut the hair of a pupil, the plaintiff's daughter, without consent. Held that an officer of the Board of Health had ne authority to direct the school teacher to do it, and that the school teacher being without authority to cut the hair as a sanitary measure, could not, either, do it as a punish-

Opinion of the Court, by McCully, J. This was an action of tort brought in the Police Court of Wailuku. Maui, appealed to the Circuit Judge in Chambers, from whom exceptions were taken to the Circuit Court of the Second Judicial Circuit, which overruled, pro forma, the exceptions taken to the rulings of the Circuit Judge in Chambers, which bill of exceptions and the records and papers on file are the matter before this Court.

We quote what is necessary,

The parties admit that on the 10th day of October A. D. 1889, Kela, being a minor daughter of Kahula the plaintiff in this suit and attending as a scholar in the Waihee Government School of which H. Z. Austin the defendant in this suit is the Principal Teacher, there and then the said defendant did cut the hair of the minor Kela against her wishes and against the wishes of the said plaintiff. Plaintiff has demanded \$50.00 damages of said defendant. Said defendant refuses to pay the same and pleads justification in law.

"G. Herbert sworn. I am the Government physician for the District of Wailuku. It is part of my | Chapter 43 of the Laws of 1888. duties to examine the school children in the district. Know Kela, I did not order her hair cut. The vermin could have been removed by other means."

Cross Examined. About nine days before the 10th of October I examined the Waihee School children and examined Kela, cannot say what the condition of her head was. My general instructions to H. Z. Austin were, as I saw that some of the children had vermin Book, News and Stationery Store and sores on their heads that the hair should be properly cleaned, and that I would provide some salve for the purpose; but if they should neglect to do so, after due | Fernander's POLYNESIAN RACES notice had been given to them and their parents then their hair should be removed. I gave the order both as a physician and as an officer of the Board of Health from a sanitary point of view, for the sake of the health of the children infected and for the cleanliness of the school. From my present examination of Kela's head I see no necessity of having had to cut her hair at the time.

Plaintiff Rests. "H. Z. Austin, sworn. As near as I can remember, Dr. Herbert's instructions to me after his finding out that some of the scholars were infested were that he would provide the salve and soap and that I must tell their parents that if they did not clean the heads of their children then I should cut off their hair. My attention was called to the condition of the head of this child Sarah or Kela by my assistant teacher, in whose room she is and on my looking I saw that she was so infested, then I took Sarah and gave her in charge of my school officer and told him to take her to her mother to clean her head. The next day Sarah returned to school still dirty; I asked her if her mother had cleaned her head, she answered no, so I set her aside with others to have

their hair cut that day." The assistant teacher testified to the same facts.

The Circuit Judge held that the defendant was not justified by law Begin the Year 1890 Aright. in his proceeding and confirmed More Sugar at Less Cost. the judgment of the Police Court | Beet Sugar in Kansas. awarding the plaintiff one dollar The Banana- A Valuable Fruit-The damages.

BY THE COURT.

The justification claimed for the as ault is "that the Board of Education or the Board of Health have application in this case has not ex-

It is clear that Wundenberg's ceeded their authority.' Defend-

We must distinguish the authority of the Board of Health and of the Board of Education.

We know of no authority in the Board of Health to enforce cleanin question; that the price was liness of the person in a matter where there would be no authority to quarantine to prevent the spread he took a conveyance to himself of dangerous diseases. The Board has authority to proceed only according to rules adopted and promulgated, and there is no rule applicable to the case described, and probably no rule could be supported on the ground of the necessity of protecting the public health. It is also to be said that the Board of Health could not exercise special authority over school children other than that founded on their powers in the case of contagious diseases. As Dr. Herbert would have had no authority to cut the girl's hair, he could not authorize the teacher to do it. The Board of Education, and

the teacher, who, in this case, may be treated as one, have the power of the Government and discipline of the school. By Section 24 of the School Act, C.L. page 206, "Each teacher shall have the power to administer necessary and reasonable punishment upon the pupils of his school and shall not in any way be punishable for so doing." The justification must be as a punishment, if it was not a legal sanitary measure.

Punishment is inflicted for disbedience. Who was disobedient in this case? The defendant testifies, "I gave her in charge of my school officer and told him to take her to her mother to clean her head." The next day it appeared that the mother had not obeyed the order.

But is cutting the hair a "reasonable punishment" at all? It may be a matter of mutilation.

In the case of a girl pupil particularly it might be an intolerable outrage for a teacher to cut her hair off. It needs no exposition to show what flagrant violation of personal right might be inflicted if this were justifiable as a punish-

Is there then no protection for the teacher and other scholars from contact with a pupil in an offensive condition from preventible causes? Yes. We deem it within the authority of the teacher to order that such a pupil be not allowed to attend school until it is made decent, and we are of opinion that the absence being so ordered would not justify the "person responsible for the child as a minor" in proceedings under the act for enforcing the attendance of children at school.

The exceptions are overruled. V. V. Ashford, for the plaintiff; A. P. Peterson, Deputy Attorney- FRANK GERTZ, V. V. Ashford, for the plaintiff; General, for the defendant. Honolulu, February 7th, 1890.

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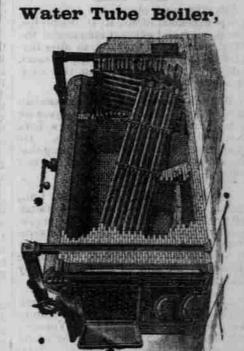


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